



Caltrans Statewide Small Business Council Minutes of Meeting – April 21, 2006

Caltrans, Office of Civil Rights
1823 14th Street, Room 207
Sacramento, CA 95814
Telephone: (916) 324-0449

Statewide Council Members Present:

Paul Guerrero, California Small Business Entrepreneurs, Inc.
Arvin Chaudhary, Consulting Engineers and land Surveyors of California (CELSOC)
Eddy Lau, Asian American A&Es, San Francisco
Rebecca Llewellyn, WCOE
William Yang, Asian-American A&Es – So Cal
Ezekiel Patten, Black Business Association
Jeffrey Lee Jackson, American Indian Apprenticeship
Johnathan Hou, Asian Business Assoc.
Diana LaCome, National Concilio of America (NCA)
Alfred Quevedo, Society of American Military Engineers (SAME)
Sandy Black, American SubContractors Association of California, Inc.(ASA)
Floyd Chavez, Northern California Latin Business Association (NCLBA)
Rodrigo Garcia, Hispanic Society of Engineering & Management Services (HSEMS)
Fred Jordan, San Francisco Black Chamber of Commerce
Steven McGlover, California Community Connection Corp.

Caltrans Staff Present:

Olivia Fonseca, Chair
Angel Carrera, Civil Rights
Janice Salais, Civil Rights
Sonny Smith, District 7
Ruby Louie, District 4
Deborah Robertson, District 7
Vicki Zuppan, Local Assistance
Elizabeth Dooher, Construction
Cris Galia, DPAC
Christine Carrington, District 11
Jerald Peterson, Surveying
Rhiannon Wright, Civil Rights
Robert Padilla, Civil Rights

Guests Present:

Pat Padilla, Padilla & Associates
Sarah Davis, GCAP Services
Sam Wallace, Williams-Wallace Consultants
Don Zweifel, Compliance News

Welcome/Introductions/Opening Remarks:

Chair Fonseca began the meeting by welcoming and thanking all present for their attendance. Introductions were made around the room.

ITEM #1: Approval of March 17, 2006 Meeting Minutes.

Motion: Councilmember Guerrero

Second: Councilmember Lau

Approved by consensus.

The March 17, 2006 minutes were approved with one correction to page 3, District 7 reporting: District 7 is co-hosting a monthly meeting of the National Association of Minority Contractor's Association, Los Angeles Chapter with the California Bear Credit Union.

ITEM #2: Governor's Office of Small Business Update

In the absence of Councilmember Trinidad, this item tabled.

ITEM #3: Legislation Sharing

In the absence of Councilmember Perez, this item tabled.

ITEM # 4: *GoCalifornia!* Update

Elizabeth Dooher, Project Manager, *GoCalifornia!* reported that Governor Schwarzenegger has proposed the Strategic Growth Plan, part of which is a historic comprehensive transportation investment package that incorporates *GoCalifornia*, a mobility action plan (performance-driven, outcome-oriented) designed to decrease congestion, improve travel times, and increase safety while accommodating future transportation demands from growth in the population and the economy. See *GoCalifornia!* Construction Industry Capacity Expansion (ICE) Workplan.

Councilmember Guerrero raised a question about the lack of Department resources and the fact that Gene Mallette (Deputy Division Chief, Construction) has stated that the Department does not operate with sub-contractors. Ms. Dooher stated that Department Director, Will Kempton, has directed staff efforts to *GoCalifornia!* and asked that a task plan be developed to coordinate actions of prime and subcontractors in a formal-ized partnership plan. Director Kempton will address this in a joint Partnership workshop and work session. As for the Department working with subcontractors, in a conventional sense, the Department does not engage in a contractual relationship with subcontractors. However, in the case of *GoCalifornia!*, Director Kempton will bring prime and subcontractors together to create a planned partnership.

Councilmember Quevedo asked how the Department would enforce entitlement payments to prime contractors. Ms. Dooher answered that the Department will require information for payment from the prime contractor and paper work for payment by the subcontractor.

Councilmember Llewellyn credited the Department for including small business in this plan and for the positive approach the Department has taken in providing small business a voice in this process.

Ms. Dooher assured the members that Director Kempton is fully committed to this plan and including small business in the process is a priority. Councilmember McGlover repeated Councilmember Quevedo's

question about who will enforce claims to ensure prime contractors pay subcontractors. As check writers, he believes the Department should be responsible for making sure subcontractors are paid.

Councilmember Quevedo asks why the Department cannot issue two-party checks. Ms. Dooher's response is that the Department does not establish a direct contractual relationship with the subcontractors and cannot force the prime contractors to pay the subcontractors. The issue of payment is between the prime and subcontractor. Ms. Dooher and Councilmember McGlover both agreed this is an issue that is best addressed in the Construction Committee.

Councilmember Hou pointed out that the *GoCalifornia!* Construction Industry Capacity Expansion (ICE) work plan focuses on construction and he is disappointed that it does not include or address professional services, such as architecture and engineering. He suggested that small A&E contracts could be set aside for small businesses. Ms. Dooher responded that the projects identified in the *GoCalifornia* plan have already been designed and will be ready to list when the funds are made available.

Councilmember Jordan suggested the Department consider hosting partnering sessions, similar to those held in the private sector, as opposed to pre-construction meetings. Councilmember Lau commented on the invoice payment process and lack of enforcement. He said the subcontractor should get the signatures of the prime contractors and the Resident Engineers and the Contract Manager should get the signature of the prime consultants before all the subs can get paid. He said this process puts the burden on the prime contractors to pay the subcontractors. Councilmember Guerrero stated that subcontractors should get paid or they should explore legal remedies in court, such as arbitration or placing a stop notice and file a lawsuit. He said just the threat of potential legal fees and paper work involved will motivate the prime contractors to pay the subcontractors on time.

Deborah Robertson asked where the ICE meeting would be held. Ms. Dooher said it would be held at the Lion's Gate Hotel, formerly known as McClelland AFB in Sacramento, CA. Guest Sam Wallace stated that while this is a good plan, the plan should include prime contractor incentives for early payment. He also suggested the plan could include economic development incentives, such as state tax advantages from Enterprise Zone, HUBZONE or the Workforce Investment Act. Councilmember Jordan agreed these advantages could extend to second or third tier subcontractors, thus providing a bona fide economic impact.

Chair Fonseca brought a conclusion to the discussion by reminding the members that the plan is new to the public and getting information out to them is critical and necessary. She thanked Ms. Dooher for her presentation and time.

ITEM #5: District Updates and Update on SR 125 Project

District 7: Deborah Robertson announced the District Procurement Fair is scheduled for April 25, 2006. The Procurement Fair will be the District's fourth fair. The District will be participating in a small business exposition hosted by Assemblyman Pedro Nava on March 24, 2006 at the Ventura Crowne Plaza Hotel.

Sonny Smith distributed the April 25, 2006 Procurement Fair flyer. He stated the procurement fairs are important to the Department as a method of collecting best or promising practices and outcome standards, which can then be used to measure our performance.

District 7 is addressing DBE participation at a local agency level. Director Failing has instructed his staff to draft a letter focusing on larger city local levels, directed to larger city mayors for signing off on DBE goals. Councilmember Hou affirmed that Director Failing is very supportive of the DBE program and commended

him for his efforts. Ms. Robertson stated the large city mayors and local agencies need constant attention and gentle persuasion.

District 4: Ruby Louie reported that she has completed a bulletin on all project outreach in District 4 and will provide SBC staff a copy to circulate to all SBC members. Councilmember Jordan asked what the DBE goals are for the Devil's Slide Tunnel project and did de-federalizing (or no longer adhering to the "Buy American" campaign) make a difference in the SAS Project. Chair Fonseca replied that the SAS project was de-federalized and the de-federalizing does not prevent small businesses from participating on the project. Ms. Louie indicated she did not know what the goal was for the Devil's Slide Tunnel project.

Councilmember Lau asked whether or not the District has looked into breaking its contracts into smaller amounts to make it easier for small businesses to participate. He said the Department needs to put out the effort. Councilmember Jordan stated the Department isn't interested in putting its efforts into small contract management. Councilmember McGlover voiced his frustration about this topic and that the same problems and issues are being brought up meeting after meeting with the Department giving the same ineffective answer with no new action. Chair Fonseca replied that the Department actively seeks out small business participation as is shown by the annual small business participation levels.

District 11: Christine Carrington reported the District is preparing for its second annual Prime Contractor Award Breakfast in September. This award is presented to a Prime contractor who has met or exceeds the DBE goals on Caltrans contracts. Last year's recipient was Granite Construction. In addition, Dist 11 has offered to host the September Statewide Small Business Council meeting in San Diego at their new building.

Further, D11 will attend the D7 procurement fair to show their support on April 25, 2006 and the D11 SBC meeting will be held April 27th at 9:00 at our Viewridge office. As for *GoCalifornia!* Projects, the District has SHOPP projects that will be going out to bid in about 6 months. They will mostly consist of restriping and operational improvements. Finally, the District currently has 10 various construction projects out for bid but none are A&E.

California Transportation Ventures (CTV): Pat Padilla, representing the Developer of the SR125 South Bay Expressway (SBX), reported on the Design Builder's (Otay River Constructors – ORC) anticipated award activity and corresponding impact on DBE participation commitments by Project from March 17, 2006 to April 19, 2006 as follows:

Anticipated Sub Contract Award Activities

Landscaping Contract: ORC is currently drafting a Letter of Intent to award.

Potential impact on DBE participation:

-Gap/Connector Design Build-100% DBE participation

-Toll Road Design Build-Unknown percentage of DBE participation

Site Concrete Contract: Bid Closed April 1, 2006, zero anticipated DBE participation; Bidder's good faith effort documentation currently under review by SBX.

Upcoming Subcontractor Opportunities

Concrete Stain Contract (RFP # 26325-2107): Estimated value of contract by project is \$576,894 Gap/Connector Design Build and \$482,425 Toll Road. ORC is finalizing scope to facilitate release of Bid.

Outreach Activities

ORC conducted follow-up with attendees/potential applicants from the previously sponsored ORC DBE Certification Trucking Certification Workshop held on March 6, 2006. ORC anticipates forwarding (4) four DBE Applications to Caltrans for processing in the near future as a result of this targeted outreach effort.

Ongoing-Compliance Monitoring Effort

ORC reported that it is working closely with its major subcontractors to ensure that all proposed/listed DBE Subcontractors maintain their respective DBE Certification status.

In addition to SBX monitoring ORC's Monthly DBE Subcontract Payment Reports to effectively track DBE attainments towards meeting DBE commitments, SBX is reviewing the daily inspector reports and filed contractor Certified Payroll Records (CPR's) against contractor paid work activity to monitor compliance with commercial useful function standards.

ORC has also reported that it has instituted internal controls to monitor DBE participation at all levels of subcontracting to ensure commitments are actualized.

Councilmember Guerrero asked that the concrete overlay process be defined further to state whether it is a bonding or simply a stained process. Ms. Padilla replied that this is detailed in the monthly updates, timely reports and Commercially Useful Function monitoring and that ORC will be reporting to OTAY on project gaps.

ITEM #6: Statewide Committee Reports (New Items Only)

COMMODITIES:

Councilmember McGlover strongly urged the Department to purchase at the procurement fair, that all agencies participating should buy, that certification as a small business not be a requirement to sell, and that the small business involved in the procurement fairs be allowed to finance the fairs. Councilmember McGlover suggested these guidelines apply to all Department-supported procurement fairs and made a standard method of practice. See Action Item listing for the 2006 Commodities Committee goals and updates.

Commodities Committee Action Needed:

- 1. Add hosting a videoconference meeting with all Caltrans Small Business Liaisons to obtain their support of the procurement fairs and brainstorm ideas to increase SB/DVBE participation to the action item-listing, and**
- 2. Ask that Chair Fonseca secure the total dollar amount of sales of all procurements fairs held with Caltrans.**

PROFESSIONAL SERVICES:

Councilmember Lau reported the Professional Services Committee met Thursday, April 20, 2006 at 6:00 PM. The Committee selected In-Road, small business utilization (design). At the meeting, Gene Shy reported that the Local Agency Procurement Manual is being revised and that A&E selection criteria is being revised. Councilmember Lau stated by the May 1st announcement of the DBE-RN/RC program, the Department should implement a Micro Business program. With the announcement that Steve Alston is leaving the Department as head of DPAC, Councilmember Lau asks that Steve be invited to attend the June

SBC meeting and that gratitude be conveyed to Steve's superiors on behalf of the Committee. Councilmember Lau expressed his wishes that Steve's successor continues the work Steve has provided. As a member of the DGS Small Business Council, too, Councilmember Guerrero said all SBC members in the construction industry are welcome to attend the DGS SB meetings and offered to send out a meeting schedule to all SBC members of future meetings. See Action Item listing for the 2006 Professional Services Committee goals and updates.

DBE ANNUAL GOAL SUBCOMMITTEE

Councilmember Guerrero reported the Committee met Friday, April 21, 2006 at 8:00 AM. Further he said he would like for the Department to develop a DBE bidders list and seek resources from FHWA to do so. He added that the Department goal setting methodology is ineffective without a bidders list and he finds it difficult to believe Caltrans lacks the staff resources to develop a comprehensive DBE bidders list.

Additionally, Councilmember Guerrero commented that the Disparity Study RFP awarded to BBC was done in such a way that it appeared unethical on having GCAP as a reviewer on the initial DBE analysis and the public "perception" was created that Caltrans provided an unfair advantage to BBC. According to Councilmember Guerrero, the public perception is that the Department provided GCAP classified information that GCAP then provided to BBC for BBC to use in its response to the Disparity Study RFP.

Chair Fonseca stated that she was responsible for GCAP obtaining the service contract to review the data gathered during the 90-day public participation period. She offered the following explanation:

In late December 2005, assessing who in Caltrans could review/analyze the data/evidence collected during the public comment forums, Chair Fonseca spoke to the Chief Deputy Director, Randy Iwasaki and indicated Caltrans did not have the ability to complete the DBE data summary in two weeks. However, the GCAP contract scope of work allowed Caltrans to request GCAP to complete special outreach and data studies. With the Chief Deputy Director concurrence, in the last week of December, she approached GCAP to inquire about their capacity to review such data. GCAP President Ed Salcedo told Chair Fonseca that GCAP could complete the data summary and attend some public forums. The Office of Civil Rights proceeded to prepare the limited scope of services for GCAP to complete the data summary and attend 4-6 public participation forums.

Caltrans gathered all the data collected during the public participation period and handed all the information over to GCAP the week of April 3, 2006. The public participation ended on March 20, 2006 and the final filing date for the Disparity Study RFP was March 29, 2006. GCAP did not have all the data gathered by Caltrans prior to March 29, 2006.

On March 29, 2006, six companies submitted proposals to perform the Disparity Study; two from California (Compliance News, Mason Tillman and Associates) and four from out of state (Miller Consulting, NERA Economic Consultants, BBC Research and Consulting, and MGT of America). A three-member RFP evaluation panel was assembled before March 29, 2006. Prior to the panel receiving the proposals for evaluation, NERA was removed from the process. Prior to conducting interviews, Mason Tillman was dis-invited to the presentation and removed from the remaining proposal process, leaving four proposers, one company which is domiciled in California (Compliance News). Chair Fonseca stated that today (April 21, 2006) the Disparity Study 5-day Intent to Award notice ends. The notice of intent shows BBC as the winning proposer.

Councilmember Guerrero asked Chair Fonseca if she was aware BBC was a sub to GCAP for the initial data summary. Chair Fonseca replied she was not aware GCAP was working with BBC on the data summary nor did she have to know. She indicated she was not the GCAP contract manager and was not engaged in the day-to-day activities of the contract once an agreement was made that GCAP would be responsible for delivering the data summary in the time specified. Councilmember Lau stated his concern is not that the Department amended GCAP's contract but GCAP failed to disclose their lack of in-house capability to review the evidence/data collected during the public comment forums and had to hire someone else to do the study. He suggested that Caltrans rescind BBC's bid to perform the Disparity Study because GCAP had an unfair advantage. Chair Fonseca said, as of March 29th, GCAP did not have all the information to complete the data summary. Councilmember Quevedo commented whether or not Caltrans in general or Chair Fonseca specifically knew BBC was a subcontractor to GCAP and now GCAP is a subcontractor to BBC for the full study is not relevant but felt Caltrans should just move on with the process and allow BBC to perform the Disparity Study because the harm is to the DBEs if the study is delayed by rebidding.

Staff member Carrera stated that as of today (April 21, 2006) there was one award protest. Councilmember Jordan expressed his disappointment that Mason Tillman was dis-invited to the interview the day before she was to present. He expressed his vigorous concern about Mason Tillman's removal from the process. He asked if the Director had received calls from Legislator regarding Mason Tillman. Chair Fonseca responded the Department had received several inquiries on behalf of Mason Tillman. Councilmember Garcia commented that while he doesn't disagree with the general sentiment of the group, that he was not in favor of delaying the process further, that the DBE program is important and that the Department must consider the effects of a potential delay. Councilmember Llewellyn suggested either we delay the process or we support one that is set up to fail. In either case, she said BBC is domiciled in Denver, CO and she, too, has concerns about BBC because BBC is not in California and we are different than Colorado. She pointed out that small business owners may not reveal their business challenges to a company from out of state.

Councilmember Lau said that GCAP not admitting to Chair Fonseca that the ability to analyze evidence/data was not in-house with GCAP is unethical behavior. He believes that Ed Salcedo intentionally misled Chair Fonseca and failed to fully disclose information that, in the process, brings into question the integrity of the GCAP/BBC relationship. Chair Fonseca replied GCAP was not required to disclose their business relationship with BBC with her personally for the initial data summary. The decision to pursue GCAP to complete the data summary was made in December 2005 and before the Disparity Study RFP was made public. Councilmember Quevedo stated that he feels there may be a conflict of interest on GCAP's part and would support rescinding the proposals. Chair Fonseca reminded the group that on May 1st, Director Kempton would announce whether sufficient evidence was accumulated to continue the race-conscious DBE program or the need to amend the DBE program. She also reminded everyone, the Director's goal is to execute the Disparity Study contract on May 1, 2006. She indicated she would share today's information with the Director and she was certain the Director would consider their comments and the fact that any re-bid would take the Department 3-5 months to complete the process. Deborah Robertson offered her general favorable experience with BBC. She indicated she was the project manager for the Department customer survey and BBC was the hired consultant. She felt BBC met and exceeded the contract scope. She asked when is the earliest time Chair Fonseca could meet with the Director or the Chief Deputy Director to share the sentiments of the Council members. Chair Fonseca said she was meeting with the Chief Deputy Director at 1:30 PM today (April 21, 2006) and would share the discussion.

Councilmember Hou disagreed that it would take five months to re-evaluate new proposals, especially if you used the same review panel. He also pointed out that a potential problem would arise if the Disparity Study were conducted by means of a telephone survey. It wouldn't work in California. While BBC may be a good company, he said they don't go out to the marketplace to collect data. Councilmember Patten said

he didn't believe Caltrans sought out the lowest price, but rather created a quality-based bid. He said he has concerns about Caltrans eliminating the DBE-RC program and the manner in which they are doing things. He believes Caltrans interest are solely economic and not with small business. He further indicated the Council members should have had a bigger role in the selection of the consultant. Councilmembers Guerrero and Jordan voiced that the proposals should be rejected and a Councilmember should be appointed to the evaluation panel.

Chair Fonseca reminded the group that a couple of Council members reviewed and provided input to the scope of services. In addition, the scope includes providing updates to the Council. Councilmember Guerrero asked a) if the bid is rejected due to the protest, will Caltrans re-bid the proposal and b) a SBC member should be involved in the entire selection process. Chair Fonseca replied, if the current protest results in the need to reject all proposal and rebid, the Department would do so, as directed. If the Department has to redo the RFP, the Council would be invited to review the scope of work again. Councilmember Garcia indicated today's open discussion about who submitted proposals, which proposer is favored and which proposer is not favored and that the final proposer should be from California is clearly a conflict of interest for the Council members to be discussing opening. Councilmember Lau said it is not appropriate to discuss the proposers qualifications. He merely wants to discuss GCAP's failure of full disclosure. He believes the process is tainted, prefers that the study be delayed because he is concerned about the product outcome, and urges the members to agree that generally accepted ethical standards have been compromised. Councilmember proposed that the Council members consider presenting a motion.

Motion (Lau): to "Request Director Will Kempton reject all Disparity Study proposals and go out to re-bid."

Second: Guerrero.

Discussion:

Councilmember Jordan states that the decision rendered by the results of the Disparity Study will affect our lives and BBC must be familiar with our local businesses. The consultant to complete the study should be from California. Councilmember Jackson said the decision would affect our lives either way. Councilmember Garcia states that while he hears that some SBC members have an unfavorable sense about BBC, he only wants a good study to be the result and the Council should not be involved in deciding who is finally selected. The Department is going to ultimately face the legal challenges regardless of the study outcome. In voting, Councilmember Lau suggested a roll call of present members be made and so note their vote. Councilmember Quevedo said that BBC being from out-of-state does not concern him. Councilmember Guerrero expressed that he doesn't want a federal judge to terminate the DBE program just because the award of the Disparity Study is tainted.

Motion Passed by the following Votes:

Ayes: Guerrero, LaCome, Llewellyn, Jackson, Jordan, Black, Quevedo, Patten, Lau, Hou, Chaudhary, A.

Nays: None.

Abstain: Garcia, Yang.

Absent: Chavez, McGlover

Chair Fonseca, asked the Council what was the basis of the motion. Councilmember Guerrero answered the "perception" that GCAP had unfair advantage.

CONSTRUCTION

Councilmember Llewellyn reported the Construction Committee met Thursday, April 20, 2006 at 6:00 PM. Two new action items considered by the committee:

1. That the Caltrans web site link to a list of Minor B contracts (\$120,000 or less) in a way that draws the attention of small business owners and that Caltrans develop a database when it seeks small businesses that are ready, willing and able to participate in its contracts, and
2. The Committee requests a presentation be made to the entire SBC by the Department of Labor Standards (Department of Industrial Relations or DIR) on the issue of prevailing wages.

See Action Item listing for the 2006 Construction Committee goals and updates.

Councilmember Guerrero asks that a presentation of Caltrans' substitution policy of subcontractors be made to the entire SBC. He stated that its substitution practices have been illegal since July 2004 and wants to know how Caltrans intends to fix it.

EXECUTIVE COMMITTEE

The Executive Committee did not meet.

ITEM #7: Public Comment/Good of the Order

Chair Fonseca reminded new members, Sandra Black and Alfred Quevedo to identify a Committee in which they wish to participate.

Councilmember Guerrero reminded everyone that he will host the June 15, 2006 Small Business Council Committee meetings at his home in Stockton and needs a head count because stemmed wineglasses are being made with the Caltrans logo for each attendee. Chair Fonseca said coordination would be made with the District 10 Deputy Director to host the full Small Business Council the following day, June 16, 2006.

Chair Fonseca asked the membership to decide as a group whether or not it would prefer their individual telephone numbers and e-mail addresses listed in the public SBC roster to be placed on the web site. The members were split in their preference and this item was tabled for a decision at the next SBC meeting.

Chair Fonseca drew the member's attention to a handout in their packets that identified a Small Business Portal web site developed by the California Economic Development Partnership in cooperation with the Governor's Office, California Business, Transportation & Housing Agency, Labor & Workforce Development Agency, and the California Department of Food & Agriculture.

Chair Fonseca informed members that Travel Expense Claims (TECs) are still a challenge. New instruction will be sent out.

Councilmember Guerrero asked members to consider having it's September 2006 meeting in San Diego. This item was tabled for discussion at the next meeting.

With no further business before the Council, the meeting adjourned at 12:30 p.m.

At 5:49 p.m. on April 21, 2006, Chair Fonseca sent an email to the Council members notifying the membership that she spoke to Director Kempton and shared the Council motion to “Request Director Will Kempton to reject all Disparity Study proposals and go out to re-bid.” The Council basis for the motion: The perception that proposer, BBC, may have had an unfair advantage in submitting the proposal since BBC was involved in completing the initial DBE data analysis. The Director was also informed that as of 3 p.m. two formal protests had been filed with one protester stating BBC may have had an unfair advantage since they were a subcontract with GCAP in completing the initial DBE data analysis.

Director Kempton acknowledged the Council motion and the two protests. He indicated, Caltrans would follow the protest process and await the final resolution to the protests. At this time and unless told differently from the protest findings and results, the Disparity Study proposals will not be rejected and re-bid.

Director Kempton is committed to complete the Disparity study in twelve months from May 1, 2006.

Next Meeting May 18, 2006.

Approved by:

OLIVIA FONSECA
Deputy Director
Civil Rights